



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 10-07514
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid Williams, Esquire, Department Counsel
For Applicant: Joseph R. Price, Esquire

08/28/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 27, 2010. On June 19, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On June 28, 2012, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on August 8,

2012. I convened a hearing on August 15, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and entered in the record without objection. Applicant testified, called no witnesses, and introduced nine exhibits, which were identified and marked as Applicant's Ex. A through Ex. I and entered in the record without objection. At the conclusion of the hearing, I left the record open until August 22, 2012, so that Applicant could, if he wished, provide additional information on the payment of his delinquent debts. Applicant timely filed a seven-page exhibit. Department Counsel did not object to its admission. Department Counsel's comments are identified as Hearing Exhibit (H.E.) 1. I marked Applicant's post-hearing submission as Ex. J and entered it in the record. DOHA received the hearing transcript (Tr.) on August 21, 2012.

Procedural Matters

Applicant requested that his hearing be expedited. At his hearing he affirmatively waived ¶ E3.1.8.of Enclosure 3 of the Directive, which provides that an applicant shall be notified at least 15 days in advance of the time and place of his or her hearing. (Tr. 19-22.)

Findings of Fact

The SOR contains seven allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.g.). In his Answer to the SOR, Applicant admitted five allegations (SOR ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.g.). He denied the two allegations at SOR ¶¶ 1.e. and 1.f.). Applicant's admissions are entered as findings of fact. (Answer to SOR.)

Applicant is 48 years old, married, and the father of an adult son. In 1983, he enlisted in the U.S. military; he completed his service in 1987 and received an honorable discharge. He received a bachelor's degree from a four-year institution of higher education in 1992. He then took a series of private-sector contract positions and was awarded a security clearance as a government contractor in 2000. (Ex.1; Tr. 45-48.)

In 2005, while still employed as a government contractor, Applicant established a small business in a rented store front; the business specialized in internet technology services. In 2005 and 2006, the business flourished. When his government contract ended in 2006, Applicant devoted himself full time to his business, which continued to do well. However, at the end of 2007, Applicant's business diminished during a financial downturn. In May 2008, Applicant's wife lost her position when the non-profit organization she worked for experienced financial difficulties. Applicant found it difficult to meet his business expenses, including rent on the store, and he informed the owner of the property that he was in financial difficulty because of the decline in business. The

property owner agreed to forebear in demanding rent on the store property for six months in the hope that the business climate for Applicant would improve. Applicant continued to keep the property owner apprised of the status of his business. (Tr. 56-64.)

The business climate did not improve. Applicant met with the building owner and worked out a plan to remove his inventory, settle debts with vendors, vacate the property, and pay his delinquent rent. Applicant then took a position with a government contractor and used a portion of his earnings to pay off the debts arising from his failed small business. After a time, Applicant's employer advised him that he should apply for a security clearance. (Tr. 60-64.)

The SOR alleges at ¶ 1.a. that Applicant was responsible for a \$6,134 account, in collection status, which has not been satisfied. At his hearing Applicant testified that the debt arose from a personal loan he took out to finance his business in 2007. He stated that he had paid approximately \$1,000 on the balance, and because of his previous payments, the creditor agreed to settle the debt for \$4,330. He provided documentation establishing that he had settled the debt in June 2012. (Ex. B; Ex. C; Ex. G; Ex. I; Tr. 68-70.)

The SOR alleged at ¶ 1.b. that Applicant was responsible for a \$1,103 delinquent account, in charged-off status, to a credit card company. Applicant stated that the debt arose when the manager of his business, in Applicant's absence, used a credit card to purchase inventory. He provided documentation showing that the debt had been satisfied in full. (Ex. H; Tr. 70-72.)

The SOR alleged at ¶ 1.c. that Applicant owed a \$1,650 delinquent debt, in collection status, to a credit card company. Applicant stated at his hearing that he paid the debt in full, and he provided documentation corroborating full payment of the debt. (Ex. F; Tr. 72-74.)

The SOR alleged at ¶ 1.d. that Applicant owed a creditor \$1,489 on an account in collection status. He provided documentation showing that the debt has been satisfied in full in April 2012. (Ex. A; Ex. I; Tr. 74-75.)

The SOR alleged at ¶ 1.e. that Applicant owed a \$4,531 judgment that was filed against him in 2008. The SOR also alleged at ¶ 1.f. that Applicant owed a \$1,304 judgment filed against him in 2007. Applicant denied responsibility for both judgments. He stated that he had disputed the two judgments with one of the credit reporting agencies because the debts were listed on his credit report as belonging to another individual.¹ He provided a recent credit report which showed the judgment debts were no longer on his credit report. In a post-hearing submission, he also provided information from the credit reporting company explaining its policy for removing disputed debts from credit reports. In part, the policy stated that if disputed information was

¹ Applicant reported that the credit reporting agency called debts that did not belong to Applicant "hitchhikers" on his credit report. (Tr. 76.)

found, upon investigation by the creditor, to be accurate, it would remain on the disputant's credit report. Additionally, Applicant provided a printed notice from the creditor reporting agency showing that there were no active disputes on his current credit report. (Ex. I; Ex. J; Tr. 75-76.)

The SOR alleged at ¶ 1.g. that Applicant owed a creditor \$552 on an account in collection status. Applicant provided documentation showing that the debt was paid and the account satisfied in full in May 2010. (Ex. C; Tr. 76-78.)

Applicant was released by his employer because he lacked a security clearance, and a clearance was a requirement for working on all of the employer's existing contracts. He received his last paycheck on July 13, 2012. His annual salary when he was employed was approximately \$110,000. (Tr. 79-83.)

Applicant stated that his wife would be laid off from her job on August 31, 2012. When he was employed, Applicant paid down his delinquent debts and saved any money that was left over each month. He explained that he and his wife were using savings for living expenses, and he had sufficient savings remaining to pay his living expenses for one month. He also reported he had about \$30,000 in his 401(k) plan. (Tr. 80-83.)

In a post-hearing submission, Applicant reported the following monthly expenses: rent, \$1,200; electricity, \$104; cell phones, \$116; internet and land-line telephone, \$77; cable, \$67; credit monitoring service, \$17; storage, \$160; Applicant's student loans, \$800; Applicant's wife's student loans, \$300; food, gasoline, and entertainment, \$400. Applicant's monthly expenses total approximately \$3,241. He has not had financial counseling. (Ex. J; Tr. 92-93.)

Applicant provided a letter from his former employer stating that if he were to be granted a security clearance, he would be eligible and "welcome to reapply for employment with [government contractor]." The employer stated that it currently had openings fitting Applicant's qualifications. (Ex. J.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt associated with his failed business, and he was unable to pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that arose when his small business experienced a financial downturn and then failed in 2007 and 2008. When he realized the business was in trouble, Applicant consulted with his landlord and told him of his financial hardship. Soon after acquiring his job as a government contractor, Applicant began to save his money to pay the delinquent debts remaining from the

failed business. Applicant provided documentation establishing that five of the seven debts alleged on the SOR were paid or settled in full. He also provided credible information to support his assertions that the two remaining debts alleged on the SOR were not his. While Applicant has not had financial counseling, he has acted responsibly and in good faith to resolve delinquent debts that arose when his business failed during a financial downturn in 2007 and 2008.

Applicant has consistently acted in a responsible manner to address his financial delinquencies. By his actions, he has demonstrated that he is serious about satisfying his creditors and avoiding future debt. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d) and 20(e) all apply in mitigation to the facts of this case.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature person of 48 years. In 2005, he established a small business that initially thrived and grew. Then, in 2007 and 2008, a financial downturn occurred that caused his business to fail. Applicant acted responsibly when his financial problems arose. He kept his landlord creditor informed, and when he acquired employment as a government contractor, he set aside money to pay the debts that remained from the failed business. He then resolved the financial delinquencies alleged and identified in the SOR as his. Applicant provided documentation showing that he systematically and responsibly paid or settled his delinquent debts.

Overall, the record evidence persuades me that Applicant is mature, trustworthy, and capable of being entrusted with access to classified information. I conclude Applicant mitigated the security concerns arising from his financial delinquencies.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. - 1.g.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Joan Caton Anthony
Administrative Judge